



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-I-, INC.

DATE: NOV. 29, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturer and distributor of medical supplies, seeks to employ the Beneficiary as an information services (IS) configuration analyst. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 202(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status if they have master’s degrees, or bachelor’s degrees followed by five years of experience

The Acting Director of the Nebraska Service Center denied the petition. The Acting Director concluded that the Petitioner did not establish the Beneficiary’s possession of the minimum education required for the requested classification and the offered position. Specifically, she found that, contrary to regulations, the Beneficiary’s membership certificate in a foreign professional organization did not constitute “an official academic record” showing his possession of “a United States baccalaureate degree or a foreign equivalent degree.”

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary’s membership certificate is an official academic record establishing the Beneficiary’s qualifications for the requested classification and offered position.

Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer applies for employment certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL must determine whether the United States has able, willing, qualified, and available workers for an offered position, and whether employment of a foreign national would hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If DOL certifies a foreign national to permanently fill an offered position, an employer must submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves the petition, a foreign

national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE EDUCATIONAL REQUIREMENTS

An advanced degree professional must have an advanced degree. Section 203(b)(2)(A) of the Act: 8 C.F.R. § 204.5(k)(1). The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2).

In addition, a petitioner must establish a beneficiary’s possession, by a petition’s priority date, of all DOL-certified job requirements. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977).¹ In evaluating a beneficiary’s qualifications, USCIS must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the “DOL bears the authority for setting the *content* of the labor certification”) (emphasis in original).

Here, the accompanying labor certification states the minimum requirements of the offered position of IS configuration analyst as: a U.S. master’s degree or a foreign equivalent degree in computer science, computer applications, accounting, finance, or “any related field of study providing the required knowledge and abilities;” and three years of qualifying experience. The labor certification also states the Petitioner’s acceptance of an alternate combination of a bachelor’s degree in the fields described above and five years of qualifying experience. The Petitioner seeks to qualify the Beneficiary for the requested classification and the offered position based on his possession of a bachelor’s degree and at least five years of experience.

On the labor certification, the Beneficiary attested to his receipt, before the petition’s priority date, of the equivalent of a U.S. bachelor’s degree from the [REDACTED]

[REDACTED] The Petitioner submitted copies of [REDACTED] certificates and a marks statement. The documents indicate the Beneficiary’s passage of the institute’s final examination and his membership in the organization. The Petitioner also submitted copies of a university diploma and marks sheet, indicating the Beneficiary’s prior receipt of a bachelor of commerce degree after three years of education at an Indian university.

The Petitioner submitted two independent evaluations of the Beneficiary’s foreign educational credentials. Both evaluations conclude that the Beneficiary’s bachelor’s degree equates to three

¹ This petition’s priority date is March 7, 2016, the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

years of U.S. university studies and that his [REDACTED] membership equates to a U.S. bachelor's degree in accounting.

The Acting Director found that the Petitioner established the Beneficiary's [REDACTED] membership as the equivalent level of education of a U.S. bachelor's degree in accounting. But the Acting Director concluded that the [REDACTED] documents did not meet regulatory requirements as "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." See 8 C.F.R. § 204.5(k)(3)(i)(B).

On appeal, the Petitioner first asserts that the regulation requires "an official record" of a bachelor's degree, not necessarily a record from a college or university. The Petitioner's assertion, however, disregards the regulation's requirement of "an official *academic* record." (emphasis added). The adjective "academic" indicates that an educational institution must issue an official record of an advanced degree professional.

Submitting an expert opinion and other evidence, the Petitioner next argues that [REDACTED] is an educational institution and that its membership certificate therefore constitutes an official academic record. But, even if the certificate is an official academic record under 8 C.F.R. § 204.5(k)(3)(i)(B), the Petitioner has not established the certificate as a "foreign equivalent degree" as the regulation requires. The regulations repeatedly state that an advanced degree professional must have at least a U.S. bachelor's *degree* or a foreign equivalent *degree*. See 8 C.F.R. § 204.5(k)(2) (defining the equivalent of a master's degree as "[a] United States baccalaureate *degree* or a foreign equivalent *degree*" followed by five years of experience) (emphases added); see also 8 C.F.R. § 204.5(k)(3)(i)(B) (requiring "[a]n official academic record showing that the alien has a United State baccalaureate *degree* or a foreign equivalent *degree*") (emphases added).

Furthermore, for classification as a member of the professions, a petitioner must submit "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C). We cannot conclude that classification as a member of the professions holding an advanced degree requires less evidence than designation as a member of the professions. To do so would undermine the congressionally mandated classification scheme by requiring less evidence for a more restrictive visa classification. Moreover, when the former Immigration and Naturalization Service proposed the regulations for advanced degree professionals, it explained that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." Proposed Rule for Employment-Based Immigrant Visa Petitions, 56 Fed. Reg. 30703, 30306 (July 5, 1991) (emphasis added).²

² Compare 56 Fed. Reg. 30703, 30306 (requiring an advanced degree professional to have at least a bachelor's degree "from a college or university"), with 8 C.F.R. § 204.5(k)(3)(ii)(A) (requiring a petition for an alien of exceptional ability to include "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

Thus, the Act and the regulations require an advanced degree professional to possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

Here, the Petitioner has not established the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree. Rather, the record indicates that he has a professional membership certificate signifying work experience, training, and education comparable to the level of education received in a bachelor's degree program, but not demonstrating that the membership is in fact a degree issued by a college or university. The [REDACTED] is not an institution of higher education that can confer a degree.³ Therefore, the Beneficiary possesses the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2). The Beneficiary also has a three-year foreign degree issued by a university, but the Petitioner has not established the degree's equivalence to a U.S. baccalaureate, and has submitted evaluations confirming the degree's equivalence to only three years of U.S. university level education. Therefore, neither of the Beneficiary's credentials establishes his possession of a U.S. bachelor's degree or foreign equivalent degree issued by a college or university, as required for the requested classification.

The Petitioner's expert, a U.S. professor of business management, asserts that [REDACTED] "is a degree-granting educational institution approved by the Government of India." The expert argues that the Beneficiary's [REDACTED] membership certificate meets a dictionary definition of the term "degree" as "a title conferred on students by a college, university, or professional school on completion of a program of study." He states: "While the [REDACTED] is not a 'university' in a traditional sense, it is a 'professional school' offering academic courses in the field of Accounting and, therefore, it does qualify as a degree-granting institution in India."

Contrary to the expert's assertion, however, Indian institutions require legal authorization to grant degrees. An authorized institution must be: a university established under a central, provincial, or state act; deemed to be a university under the University Grants Commission Act; or specially empowered by Parliament to award degrees. The Univ. Grants Comm'n Act, 1956, § 22(1), at <http://lawmin.nic.in/Id/P-ACT/1956/A1956-3.pdf> (last visited Nov. 6, 2017). The Petitioner has not demonstrated [REDACTED] legal authorization to grant degrees in India. We therefore do not find the Beneficiary's [REDACTED] membership certificate to constitute a degree.

The Petitioner also cites a 2010 decision in which we found an [REDACTED] membership certificate the foreign degree equivalent of a U.S. bachelor's degree in accounting. Citing federal court decisions, the Petitioner contends that the denial of this petition conflicts with prior USCIS decisions and that the Agency cannot deviate from prior practice and policies without explanation. *See, e.g., Laclede Gas Co. v. Fed. Energy Regulatory Comm'n*, 722 F.2 272, 275 (5th Cir. 1984) (holding that an agency must conform to its prior precedent or explain its reasoning for departure).

³ *See SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (affirming USCIS' conclusion that [REDACTED] membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

Our 2010 decision, however, was not precedential. The decision therefore does not bind us in this matter. *See* 8 C.F.R. § 103.3(c) (explaining that only precedent decisions bind USCIS employees in proceedings involving the same issues). Moreover, we are not required to approve petitions where eligibility has not been demonstrated, even if prior cases may have been approved in error. *See La. Philharmonic Orchestra v. INS*, No. Civ.A. 98-2855, 2000 WL 28275, **2-3 (E.D. La. Mar. 15, 2000) (acknowledging *Laclede*, but holding that the immigration service does not abuse its discretion in denying a petition if it finds that it approved similar cases in error). We therefore decline to follow our prior decision.

The accompanying labor certification also indicates that the offered position requires at least a bachelor's degree. Asked to specify on the certification form the alternate level of education required, the Petitioner checked "Bachelor's," indicating a minimum requirement of a bachelor's degree. The Petitioner did not indicate some "Other" educational credential or combination of credentials. Also, in the certification form section for "[s]pecific skills or other requirements," the Petitioner stated: "In lieu of the above-stated primary education [of a master's degree] . . . , the company will accept a Bachelor's *degree*." (emphasis added). Thus, the record indicates that both the requested classification and the offered position require a minimum of a bachelor's degree from a college or university.⁴ As discussed above, the Beneficiary does not possess this required degree and therefore does not qualify for the offered position or requested classification.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Acting Director, the record also does not establish the Petitioner's ability to pay the proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of IS configuration analyst as \$95,000 to \$110,000 per year. As previously noted, the petition's priority date is March 7, 2016. The Petitioner did not submit required evidence of its ability to pay in 2016, the year of the petition's priority date. Rather, it provided a letter from its chief financial officer (CFO) and copies of the Beneficiary's payroll records from January to July 2016. The payroll records indicate that, as of July 15, the Petitioner paid the Beneficiary \$66,510.57 in 2016. This amount is less than the annual proffered wage range of \$95,000 to \$110,000. Based on the Petitioner's payments to the Beneficiary, the record therefore does not establish its ability to pay the proffered wage.

A petitioner with at least 100 employees "may" establish its ability to pay a proffered wage with a letter from a financial officer. 8 C.F.R. § 204.5(g)(2). But acceptance of such a letter is in USCIS'

⁴ A labor certification supporting a petition for an advanced degree professional must indicate that the offered position requires an advanced degree. 8 C.F.R. § 204.5(k)(4)(i). A labor certification requiring less than a bachelor's degree from a college or university cannot support an advanced degree professional petition.

discretion. Here, USCIS records indicate the Petitioner's filing of multiple I-140 petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. *Id.* The Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this petition and others that were pending or filed after its priority date until the other beneficiaries obtained lawful permanent residence. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014). Absent information on the Petitioner's other sponsored beneficiaries, we do not find the CFO's letter, which states the Petitioner's gross annual revenues for 2015 and the prior three years, sufficient to establish the company's ability to pay combined proffered wages from the 2016 priority date onward.

In any future filings in this matter, the Petitioner must demonstrate its ability to pay the combined proffered wages of this petition and any others that were pending or filed after March 7, 2016. The Petitioner must provide the proffered wages and priority dates of the other petitions. It should also demonstrate: its payment of any wages to beneficiaries since 2016; the denial, withdrawal, or revocation of any petitions; and any grants of lawful permanent residence to any beneficiaries.

IV. CONCLUSION

The Beneficiary's membership certificate in a foreign professional organization equates to a level of education comparable to a U.S. bachelor's degree in accounting. But, contrary to the requirements for the requested classification and the offered position, the record does not establish the certificate as a foreign degree from a college or university.

ORDER: The appeal is dismissed.

Cite as *Matter of M-I-, Inc.*, ID# 802045 (AAO Nov. 29, 2017)